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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Charlottesville, Virginia)

MM Docket No. 00-240
RM-9793

To: The Chief, Video Services Division

REPLY COMMENTS OF
COMMONWEALTH PUBLIC BROADCASTING CORPORATION

Commonwealth Public Broadcasting Corporation ("Commonwealth"), the licensee of noncommercial educational station WHTJ(TV), NTSC Channel *41, Charlottesville, Virginia, hereby submits reply comments in the above-captioned proceeding. Other than Commonwealth, the sole party to submit comments in this proceeding was Shenandoah Valley Educational Television Corporation ("SVETC"). It supported the FCC's proposal to substitute channel *46 for channel *14 as WHTJ's DTV channel at Charlottesville, Virginia. *See Notice of Proposed Rule Making ("Notice")*, DA 00-2639 (released November 28, 2000). However, SVETC also sought to incorporate into this proceeding its proposal to retain channel *14 as a DTV allotment at Charlottesville. Commonwealth respectfully urges the Commission to (1) promptly issue a *Report and Order* granting the WHTJ-DT channel substitution, and (2) take no action on SVETC's proposal for retention of channel 14 which would delay issuance of that *Report and Order*.

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In *Achernar Broadcasting Company*, 15 FCC Rcd 7808 (2000) at para. 21, the Commission directed the Mass Media Bureau to expedite this proceeding. Despite this directive, this rule making has taken longer than a non-expedited channel change proceeding initiated by Commonwealth on the same date for WCVE-DT, Richmond, Virginia. A *Report and Order* adopting Commonwealth's proposal for WCVE-DT was released on December 1, 2000, well before comments were even due in this proceeding. See *Report and Order in MM Docket No. 00-97*, DA 00-2681 (released December 1, 2000). Commonwealth seeks the earliest possible allotment of channel *46 and finality of that decision, as contemplated by *Achernar*, so that it may formalize its plans for construction and promptly deliver noncommercial digital programming to Charlottesville.

Considering SVETC's channel 14 retention request concurrent with Commonwealth's channel substitution proposal in this proceeding risks further prolonging this rule making and delaying the occurrence of finality. The issues posed by SVETC raise non-routine legal and technical questions which are not easily resolved in an expeditious manner. The delay in release of the *Notice* occasioned by the need for the staff to address SVETC's channel 14 retention proposal attests to this. In addition, the occurrence of finality could be delayed by the submission of petitions for reconsideration by parties with interests specific to channel 14 (*i.e.*, land mobile licensees, parties interested in commercial use of channel 14, and co- and adjacent channel licensees concerned about short-spacing) who are not presently on notice of the possible retention of DTV *14 at Charlottesville.

The Commission dealt with a similar situation in its *Report & Order in MM Docket No. 99-346*, DA 01-183, released January 31, 2001 (appended hereto) which may be dispositive

here. There the Commission had before it the request of an Evansville, Indiana, public broadcaster to substitute DTV channel *12 for DTV channel *54. A commercial licensee in the market, Gilmore, submitted comments seeking retention of channel 54 at Evansville and substitution of it for that party's DTV allotment, channel 59. The staff held that Gilmore's request was not a counterproposal (inasmuch as it was not mutually exclusive with the public broadcaster's allotment request) and that it fell outside the scope of the NPRM in that proceeding. The Commission did not consider Gilmore's request in that proceeding and, instead, stated that Gilmore was free to file a separate petition for rule making which would be considered in due course.

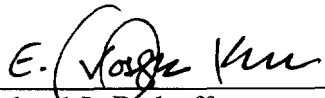
Should the Commission deem it appropriate to consider SVETC's request in this proceeding nonetheless, that request should be dealt with in a *Further Notice of Proposed Rule Making* issued after the Commission has adopted Commonwealth's channel substitution proposal. Proceeding in this fashion would give Commonwealth a prompt decision and finality in the ordinary course, as directed by the Commission in *Achernar*, and afford SVETC the opportunity to pursue retention of channel *14 on its own schedule. It would also give appropriate notice to parties with interests specific to the retention of channel *14 at Charlottesville. Issuance of a *Further Notice* under circumstances of this sort is specifically contemplated by the agency's rules.¹

¹ See 47 C.F.R. §1.421 (“[i]n any rule making proceeding where the Commission deems it warranted, a further notice of proposed rule making will be issued with opportunity for parties of record and other interested persons to submit comments in conformity with §§ 1.415 and 1.419.”).

For these reasons, Commonwealth urges the Commission to (1) promptly adopt the proposal set forth in the *Notice* and substitute DTV Channel *46 for DTV Channel *14 at Charlottesville, Virginia, and (2) take no action on SVETC's channel *14 retention proposal which could delay that channel substitution. Should the Commission conclude that it is appropriate to address SVETC's retention request in this proceeding, it should do so through issuance of a *Further Notice of Proposed Rule Making* after adopting Commonwealth's channel substitution proposal.

Respectfully submitted,

**COMMONWEALTH PUBLIC
BROADCASTING CORPORATION**

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Its Attorneys

February 5, 2001

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.622(b),)	MM Docket No. 99-346
Table of Allotments,)	RM-9763
Digital Television Broadcast Stations.)	
(Evansville, Indiana))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 30, 2001

Released: January 31, 2001

By the Chief, Video Services Division:

1. At the request of Tri-State Public Teleplex, Inc. ("Tri-State"), licensee of noncommercial educational station WNIN(TV), NTSC Channel *9, Evansville, Indiana, the Commission has before it the Notice of Proposed Rule Making, 14 FCC Rcd 20733 (1999), proposing the substitution of DTV channel *12 for station WNIN(TV)'s assigned DTV channel *54. Tri-State filed comments. Gilmore Broadcasting Corporation, licensee of WEHT(TV), DTV channel 59, Evansville, Indiana, filed comments styled as an "alternate proposal".¹ Tri-State filed responsive comments to Gilmore's proposal.

2. We believe the public interest would be served by substituting DTV channel *12 for DTV channel *54 since it permit station WNIN(TV), a noncommercial station, to preserve its limited resources. DTV channel *12 can be allotted to Evansville, Indiana, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (38-01-27 N. and 87-21-43 W.). In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Station WNIN(TV) with the following specifications:

<u>State & City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
IN Evansville	*12	15.0	177	599

¹ Gilmore supports Tri-State's request to substitute DTV channel *12 for DTV channel *54 at Evansville and further proposes the reallocation of WEHT-DT, Evansville, Indiana, from DTV channel 59 to DTV channel 54 which Tri-State proposes to vacate. Gilmore states that the reallocation of DTV channel 54 to WEHT-DT will permit the station to increase its authorized ERP from 56.5 kW to the maximum 1000 kW.

Gilmore's request is not a counterproposal nor does it fall within the scope of this Notice. There is no mutually exclusivity between the allotment of DTV channel *12 and DTV channel *54 to Evansville and Gilmore's request is a proposal to substitute a different channel for station WEHT-TV's assigned DTV channel. However, Gilmore is free to file an appropriate DTV channel substitution petition for rule making which will be considered in due course.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 19, 2001, the DTV table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Evansville, Indiana	*12, 28, 45c, 58, 59

4. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, Tri-State Public Teleplex, Inc. shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel *12 in lieu of DTV Channel *54 for station.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

CERTIFICATE OF SERVICE

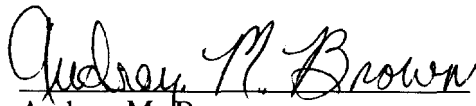
I, Audrey M. Brown, hereby certify that on February 5, 2001, I caused a true and correct copy of the foregoing "Reply Comments of Commonwealth Public Broadcasting Corporation" to be delivered to the following persons by first-class mail, postage prepaid:

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